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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,917	10/14/2003	Daniel John Smith	1171/39464B/99B-CIP	3561
279	7590	04/17/2008	EXAMINER	
TREXLER, BUSHNELL, GIANGIORGI, BLACKSTONE & MARR, LTD. 105 WEST ADAMS STREET SUITE 3600 CHICAGO, IL 60603			PATEL, NIHIL B	
		ART UNIT	PAPER NUMBER	
		3772		
		MAIL DATE		DELIVERY MODE
		04/17/2008		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/684,917	SMITH ET AL.	
	Examiner	Art Unit	
	NIHIR PATEL	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07.11.2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3,8-10 and 12 is/are rejected.
 7) Claim(s) 4-7 and 11 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed July 11th, 2007, with respect to claim 1 have been fully considered and are persuasive. The previous rejection(s) of the office action dated March 22nd, 2007 has been withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 8-10 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Zwaan et al. (Patent GB 2 252 515 A).

4. As to claim 1, Zwann teaches an apparatus that comprises a conduit 1 (see figure 1; page 3 lines 20-25) for a breathing circuit including heating means 50 located within the conduit the heating means comprising an elongate heating element covered with an inner electrical insulating layer (see figure 7; page 7 lines 1-15) and at least partially covered with an outer hydrophilic layer, there being no means for direct supply of water or fluid to the hydrophilic layer from outside of the conduit (see page 5 lines 18-25).

5. As to claim 2, Zwann teaches an apparatus wherein the hydrophilic layer is formed so as to absorb water due to its structure (see page 5 lines 18-25).

6. **As to claim 3,** Zwann teaches an apparatus wherein the heating means lies freely in the conduit to settle over at least some of its length at low points in the conduit where condensed water vapor may collect (**see figure 7**).

7. **As to claims 8-10,** Zwann teaches an apparatus wherein the hydrophilic layer is a braided sheath (**see column 5 lines 27 and 28; page 6 lines 1-5**).

8. **As to claim 12,** Zwann teaches an apparatus wherein the breathing circuit is a coaxial breathing circuit including an inner conduit and an outer conduit, the inner conduit located within the outer conduit, such that one of an inspiratory or expiratory flow paths are provided within the inner conduit and the other of the inspiratory or expiratory flow paths is provided between the inner conduit and the outer conduit and at least a region of the wall of the inner conduit is of a breathable material (**see pages 12-14**).

Allowable Subject Matter

9. Claims **4-7 and 11** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest that the conduit being an expiratory conduit.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772